

CATEGORY:	ORGANIZATIONAL: INFORMATION MANAGEMENT
SUB-CATEGORY:	DISCLOSURE OF INFORMATION
GROUP:	
DISTRIBUTION:	ALL STAFF
TITLE:	DISCLOSURE OF INFORMATION – OBTAINING VALID AND APPROPRIATE CONSENT

PURPOSE

To identify for all employees the requirements for obtaining valid and appropriate consent for disclosure of personal information/personal health information.

POLICY

Consent must:

- 1) be from the individual;
- 2) relate to the personal health information; and
- 3) never be obtained through deception or coercion.

Directors/managers/employees are responsible for ensuring that the *Protecting Your Privacy* brochure and poster are available to provide information to clients/patients/residents with respect to collection, use and disclosure of their personal health information that may take place with or without their consent.

Please refer to the policy *Personal Health Information – Identifying Purposes of Collection, Use and Disclosure* (9-02-05) for direction with respect to implied and express consent.

All disclosure of information requests requiring written consent must be documented on the *Consent to Disclose / Obtain Information* form (12-475). The signature of the person whose information is to be disclosed or the legally authorized representative is required on the consent form.

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Consent is considered valid when clients/patients/residents:

1. have reached the age of 19 years or are a “mature minor.” (Please refer to the definition below.)
2. are physically able to sign and are mentally capable of understanding what the consent implies.

The *Advance Health Care Directives Act* must be referenced to guide the process of obtaining consent on behalf of adults who are incompetent to provide consent. In the absence of a directive from the client/patient/resident, the section 10 of the *Advance Health Care Directives Act* provides a list of substitute decision-makers. The substitute decision-maker must be at least 19 years old and must be willing to act in that capacity.

Section 10 of the *Advance Health Care Directives Act* reads as follows:

10. (1) *Where a person requires the administration of health care but lacks the competency to make a health care decision and has not, while he or she was competent, appointed a substitute decision maker, or a guardian has not been appointed for the purpose by a court, or a person has been appointed but is unable or refuses to act, the first named person or a member of the category of persons on the following list may, if he or she is at least 19 years of age, act as a substitute decision maker:*

- (a) *the incompetent person's spouse;*
- (b) *the incompetent person's children;*
- (c) *the incompetent person's parents;*
- (d) *the incompetent person's siblings;*
- (e) *the incompetent person's grandchildren;*
- (f) *the incompetent person's grandparents;*
- (g) *the incompetent person's uncles and aunts;*
- (h) *the incompetent person's nephews or nieces;*
- (i) *another relative of the incompetent person; and*
- (j) *the incompetent person's health care professional who is responsible for the proposed health care*

(2) *Notwithstanding subsection (1), where a substitute decision maker is not available, or is unable or unwilling to make the health care decision, the substitute decision maker for that decision becomes the next available person or category of persons listed in subsection (1).*

(3) *Notwithstanding subsection (1), where a person has indicated in an advance health care directive that he or she does not wish an individual to act as his or her substitute decision maker, the individual may only act as the substitute decision maker where he or she is the person's guardian appointed by the court or the Director of Neglected Adults appointed under paragraph 6(4)(c) of the Neglected Adults Welfare Act .*

(4) *Notwithstanding subsection (1), a substitute decision maker referred to in that subsection, other than a court appointed guardian, the Director of Neglected Adults under the Neglected Adults Welfare Act , or a health care professional, may not act as a substitute decision maker unless he or she has had personal involvement with the incompetent person at some time during the preceding 12 months.*

(5) *A substitute decision maker other than a court appointed guardian or the Director of Neglected Adults appointed under the Neglected Adults Welfare Act , or health care professional may apply to the Trial Division to shorten or waive the 12 month requirement under subsection (4)*

In the following situations the client/patient/resident cannot sign the *Consent to Disclose / Obtain Information*:

1. The client/patient is under the age of nineteen years as defined in the province's *Age of Majority Act* (1995). In this case, the parent(s) or legal guardian must sign the consent unless the client is considered a mature minor. (Please refer to the definition below.)
2. The client/patient/resident is deceased. The substitute decision maker must sign the consent. If neither of these is available, the executor or administrator of the deceased must sign.
3. The client/patient/resident is mentally or physically dependent or incompetent as determined by his / her physician. If the client/patient/resident is unable to sign the consent due to physical or mental dependence or incompetence, the client/patient/resident's decision maker must sign the consent.

Documentation

Regardless of the reason that the client/patient/resident is unable to sign consent, employees must document in the client/patient/resident's record that he / she was unable to sign and indicate the relationship of the authorized person signing the consent form.

When Consent is Refused

Consent for disclosure of information must be refused if any of the following occur(s):

1. The client/patient is a minor;
2. There is evidence that the person signing for a minor is not legally entitled to do so;
3. There is doubt as to the identity of the individual presenting the consent (e.g. impersonating another individual to gain access to information);
4. There is reason to suspect that the signature on the consent is not authentic;
5. There is doubt as to the client/patient/resident's mental capacity to understand the consent that he or she has signed;
6. The consent has expired or has no expiry date;
7. A client/patient/resident now deceased signed the consent.

Duration of Consent

The duration of consent for disclosure of information must not exceed a one year period.

DEFINITIONS

Disclose: The term disclose, in relation to personal health information in the custody or control of a custodian or other person, means to make the information available or to disclose it but does not include a use of the information and “disclosure” has a corresponding meaning.

Express consent – Permission received from an individual that is direct, but that may be given in different forms such as in writing and may include electronic means, eg. e-mail.

Implied consent – Manifested by signs, actions or facts, or by inaction or silence, which raise a presumption that consent has been given. The ability of an organization to use reasonable judgment to infer that an individual would give his or her permission to the collection, use or disclosure of personal information given the particular circumstances of the case.

Mature minor - The competency of a minor, when doubted, is **not** decided by chronological age but on the basis of whether or not the minor is capable of understanding the nature and consequences of a treatment decision, including decisions about the disclosure of personal information. A child competent to make a major treatment decision is described as a “mature minor”.

A mature minor is a child assessed to be capable of understanding:

1. the information and opinions given to him/her;
2. his/her condition;
3. what it means to consent or refuse treatment; and
4. the proposed treatment

Mature minors have the same right to exercise informed consent as individuals who have reached the age of nineteen years.

Use: The term use, in relation to personal health information in the custody or control of a custodian, means to handle or deal with the information or to apply the information for a purpose and includes reproducing the information, but does not include disclosing the information.

LEGISLATIVE CONTEXT

Access to Information and Protection of Privacy Act (2004). Available at:
<http://www.assembly.nl.ca/legislation/sr/statutes/a01-1.htm>

Advance Health Care Directives Act. (1995). Available at:
<http://www.assembly.nl.ca/legislation/sr/statutes/a04-1.htm>

Age of Majority Act, (1995). Available at:
<http://www.assembly.nl.ca/legislation/sr/statutes/a04-2.htm>

Personal Health Information Act (2008). Available at:
<http://www.assembly.nl.ca/legislation/sr/statutes/p07-01.htm>

REFERENCES

- Health and Community Services Western. (2005 April). *Policy Manual: Disclosure of Information*
 Western Health. (2008 October). Policy #9-02-05 *Personal Health Information – Identifying Purposes of Collection, Use and Disclosure*
 Western Health poster - *Protecting Your Privacy*
 Western Health brochure - *Protecting Your Privacy*

KEYWORDS

Consent, obtaining consent, information, disclosure of information, disclosure, Advance Health Care Directives Act

FORMS

[Consent to Disclose/Obtain Information \(12-475\)](#)

TO BE COMPLETED BY STAFF IN INFORMATION AND QUALITY

Approved By: Chief Executive Officer	Maintained By: Regional Manager, Information Access and Privacy
Effective Date: 26/October/2008	<input checked="" type="checkbox"/> Reviewed: 10/March/2016 <input checked="" type="checkbox"/> Revised: 02/March/2012
Review Date: 10/March/2019	<input checked="" type="checkbox"/> Replaces: <i>(Indicates name and number of policy being replaced)</i> Authorization for Release of Information – Standard/Form (RR-A-200), Release of Information from Clinical Records (AD-R-200), Consent to Release/Obtain Information (Form 12-390), Release of Information (Former HCSW policy 18-06-25) <input type="checkbox"/> New

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